

CONCISE EXPLANATORY STATEMENT

January 28, 2004 Public Hearing
March 23, 2004

In *Dep't of Labor & Indus. v. Nat'l Sec. Consultants*, the Division II Court of Appeals determined that WISHA first-aid rules in chapter 296-800 WAC, Safety and Health Core Rules do not apply to employers with fewer than 50 employees. However, exempting employers with fewer than 50 employees from the first-aid training requirements would result in the department being less effective than OSHA. RCW 49.17.050(2) requires that WISHA adopt rules that are at least as effective as OSHA rules. The department is repealing the current first-aid rules in the Core Rules and the Agriculture standards and adopting a rule in each that requires employers to comply with the OSHA first-aid rule.

The department received public comment on the following sections and modified the proposed amendments to these sections as indicated below. All other sections proposed for amendment did not receive comment and are adopted as proposed.

AMENDED SECTIONS:

WAC 296-800-15005, Make sure that first-aid trained personnel are available to provide quick and effective first aid.

- **Reason for Adopting Rule:**
 - The adopted rule deletes current wording.
 - The adopted rule adds language from 29 CFR 1910.151, which is the federal equivalent.

WAC 296-307-03905, Make sure that first-aid trained personnel are available to provide quick and effective first aid.

- **Reason for Adopting Rule:**
 - The adopted rule deletes current wording.
 - The adopted rule adds language from 29 CFR 1910.151, which is the federal equivalent.

Comment Received Relating to this Section:

The commenter mentioned that WISHA is proposing changes to the 800 code and 307 by basically copying federal OSHA's language. The commenter is opposed to the fact that there aren't any changes made to the WAC 296-155 construction standard. The commenter would like to see WISHA adopt identical language from OSHA's code 1926.50, Section C, matching it consistent with federal OSHA in the same way WISHA is proposing to do in the 800 and the 307 codes.

The commenter read the case prior to coming here, and agrees with the above comment, that the OSHA standard, if it's going to be adopted, in order to be at least as effective as OSHA, should be across the board for all industries including the construction industry. The commenter does not see any distinction that the Judge made in construing the statute. The commenter supports the above comments that we should go ahead and make OSHA applicable to construction.

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Department Response to Comment:

WISHA disagrees with this recommendation.

- Changing the construction first aid rules is outside of the scope of this rule project.
- The court decision applied only to general industry. Because the language in chapter 296-307, Safety standards for Agriculture was based upon and is identical to the language in the Core Rule Book, and because a petition for rulemaking was received from within the Agriculture Industry, L&I is applying the same approach to Agriculture.

Comment Received Relating to this Section:

The major issue which must be clearly addressed by WISHA as part of the proposed rule change in WAC 296-800-15005, as well as 296-307-03905, is the scope or meaning of the phrase “in near proximity” set forth in Section 1910.151(b).

Department Response to Comment:

WISHA disagrees with this recommendation. In response to the court decision, WISHA is updating the first aid requirements to make them identical to OSHA. If WISHA adopted interpretive language regarding “in near proximity” that is not in the federal rule, it would not be as clear that the two standards are absolutely identical. For that reason, WISHA is not adopting any language other than a requirement to follow the federal rule, which will necessarily include any strengths and weaknesses inherent in the federal rule.

Comment Received Relating to this Section:

The commenter recommends that the proposed rule change language be modified for clarity. The language for part of the proposed rule change for WAC 296-800-15005, as well as WAC 296-307-03905, states that employers “...must comply with the first aid training requirements of 29 C.F.R. Section 1910.151(b)...” A reading of Section 1910.151(b) reveals that it is not a first aid training standard. Instead, the only reasonable interpretation of Section 1910.151(b) is that it sets forth when an employer is required to provide “...a person or persons adequately trained to render first aid.” There is no specific first aid training requirement set forth in 1910.151(b).

Since Section 1910.151(b) is not a first aid training standard, the commenter contends that the proposed language cited above should be deleted. Furthermore, the recitation of the entire Section 1910.151(b) should be placed after the first sentence in WAC 296-800-15005 and WAC 296-307-03905 and the first sentence modified to read:

“Make sure that adequately trained personnel are available to provide quick first aid as required by 29 C.F.R. Section 1910.151(b) which states:”

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Department Response to Comment:

WISHA disagrees with this recommendation. The requirement to make “adequately trained personnel” available *is* a training requirement, although it lacks specifics. In any case, regardless of the introductory language, the substance of both the rule as proposed and the change suggested by the commenter would be that the requirements of the federal rule found in 29 C.F.R. Section 1910.151(b) would apply to all employers covered by the state rules in question.

Comment Received Relating to this Section:

The commenter contends that the new first aid standard would not be as effective as Section 1910.151(b) since it would only be applicable to employers with fifty or more employees throughout the state. Section 1910.151(b) applies nation-wide to all employers that have at least one employee. As a result, WISHA would not be in compliance with Section 18 of the Act as a result of the state plan and could be subject to revocation by OSHA.

Department Response to Comment:

WISHA disagrees with this comment, although it agrees with the commenter’s argument that the state rule must be at least as effective as the federal rule. However, the commenter is mistaken in assuming that WISHA will not apply the new rule to all employers in general industry and agriculture, regardless of size. The rule as proposed does not include any exemption based on size. When this new first aid rule becomes effective, the enforcement guidance in WRD 5.05, First Aid Training in General Industry and Agriculture will be repealed and the rule will be applied to all employers within its scope.

Changes to the Rule (Proposed rule versus rule actually adopted): Adopted as proposed.